IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.363 of 1984
Date of decision : 6.9.2006

Dhan Raj (dead) through LRs & others

.....Appellants

Vs.

Charan Singh (dead) through LRs & others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Lokesh Sinhal, Advocate
for the appellants.

Mr. Vijay Pal Singh, Advocate for
Mr.S.S.Ahlawat, Advocate
for the respondents.

...

MAHESH GROVER, J.(oral)

The plaintiff-appellants initiated a suit for permanent injunction seeking to restrain the respondents from interfering in the peaceful possession of the suit property or from raising unauthorised construction thereon.

It was pleaded by the appellants that plot bearing ghar No.879 ahata No.384 situated in village Bhiduki was known as a Kabrisatan. This plot was being used by the plaintiffs as Kabrisatan to bury the dead bodies of their ancestors and the graves were existing thereon. The appellants converted to Hinduism and were in possession of the property.

The respondents contested the suit to say that they were the owners in possession of the suit property and the identity of the suit land was also questioned. An alternative plea of adverse

possession was also raised. The fact that the property was a Kabrisatan was also denied.

On the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are owners in possession of the suit land?OPP
2. Whether the plaintiffs are entitled to the relief of injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the suit is bad for non-joinder of necessary parties. If so, its effect?OPD
5. Whether the plaintiffs have got no locus-standi to file the suit?OPD
6. Relief.

The trial Court decreed the suit and held that the appellants were owners in possession of the suit plot and injuncted the respondents from interfering in the possession of the appellants. An appeal ensued and the findings of the trial Court were upset as far as the question of possession was concerned. In so far as the question of ownership was concerned, the findings of the trial Court were affirmed. The relief of injunction was declined.

Dissatisfied with the findings of the learned lower appellate Court dated 12.1.1984, the appellants have filed the present Regular Second Appeal. The respondents also filed cross-objection feeling aggrieved by the findings returned by the Courts below qua

the ownership of the appellants on the suit property.

The short question that has been raised in the present appeal is that the findings of the lower appellate Court qua possession were based on the report of the Local Commissioner who was not authorised to record any finding qua possession. The only question which the Local Commissioner was required to establish was regarding the identity of the property after getting it demarcated.

A perusal of the record shows that the Local Commissioner was appointed with the consent of the parties. The Local Commissioner in his report had categorically held that the respondents, as also number of other persons were in possession of the suit property. The Local Commissioner had also reported that no grave existed on the suit land. No objections were raised by the appellants to the report of the Local Commissioner and they had accepted the report in toto. The basis of the suit of the appellants was that the suit property was a Kabrisatan. Once no grave was found, the very basis of the claim of the appellants has been rendered hollow.

Finding of possession is a pure question of fact and cannot be permitted to be raised in a Regular Second Appeal and this Court cannot re-appreciate the evidence unless the findings of the Courts below are perverse. This has been observed by the Apex Court in **Thiagarajan and others v. Sri Venugopalaswamy B. Koil and others** (2004) 5 Supreme Court Cases 762 and **Govindaraju v. Mariamman** (2005) 2 Supreme Court Cases 500.

The finding of the lower appellate Court which has been based on the report of the Local Commissioner against which no

objections were raised, cannot be termed to be perverse. Whether this evidence was sufficient or not cannot be termed to be a substantial question of law so as to warrant interference in a second appeal as has been held by the Hon'ble Supreme Court in **State of Karnataka v. Kamalabai** (2005) 10 Supreme Court Cases 169.

In view of this, there is no merit in the appeal which is accordingly dismissed.

Coming to the cross-objections filed by the respondents, the same also warrants dismissal for the simple reason that there is absolutely no evidence on record to show that the respondents were the owners of the suit property. Even otherwise, the respondents have raised contradictory pleas before the trial Court. On one hand they have set up the plea of ownership and on the other they have pleaded adverse possession. Both these pleas are mutually destructive of each other. In **2002 Indian Civil Cases 583** it has been held that if one is to raise the plea of adverse possession, then the party so raising it has to admit the title of the owner. Apart from this, nothing has been pleaded as to how the possession was adverse to the original owner and as to when the possession became open and hostile qua him.

For the aforesaid reasons, the cross-objections are also dismissed.

As a result thereof, no interference is warranted in the findings recorded by the lower appellate Court.

6.9.2006 (MAHESH GROVER)
JUDGE

dss